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7           IN THE UNITED STATES DISTRICT COURT  
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9           FOR THE DISTRICT OF OREGON

10           ROBERT WALZ,  
11    Plaintiff,  
12    vs.

Civil No. 07-1094-AA  
OPINION AND ORDER

13           MICHAEL J. ASTRUE,  
14    Commissioner of Social Security,  
15    Defendant.

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16           Rory Linerud  
17           Linerud Law Firm  
18           PO Box 1105  
19           Salem, Oregon 97308  
20           Attorney for plaintiff

21           Karin Immergut  
22           United States Attorney  
23           District of Oregon  
24           Britannia Hobbs  
25           Assistant United States Attorney  
26           1000 S.W. Third Avenue  
27           Portland, Oregon 97204-2902

28           David M. Blume  
29           Special Assistant U.S. Attorney  
30           Social Security Administration  
31           701 Fifth Avenue, Suite 2900 M/S 901  
32           Seattle, Washington 98104-7075  
33           Attorneys for defendant

34           AIKEN, Judge:

35           Claimant, Robert Walz, brings this action pursuant to the  
36           Social Security Act (the Act), 42 U.S.C. §§ 401 and 1381-83f, to

1 obtain judicial review of a final decision of the Commissioner  
2 denying his application for disability insurance benefits under  
3 Title II of the Act and for Supplemental Security Income (SSI)  
4 disability benefits under Title XVI of the Act. For the reasons  
5 set forth below, the Commissioner's decision is affirmed and this  
6 case is dismissed.

7 **PROCEDURAL BACKGROUND**

8 Plaintiff alleged disability beginning March 10, 2004, due  
9 to back problems and congenital upper extremity deformity. Tr.  
10 79-80. The Commissioner denied plaintiff's applications  
11 initially and on reconsideration. In February 2007, an  
12 administrative law judge (ALJ) held a hearing to consider  
13 plaintiff's application for disability. Tr. 276-98. On March  
14 21, 2007, the ALJ issued a decision finding plaintiff not  
15 disabled under the Act. Tr. 12-22. On June 13, 2007, the  
16 Appeals Council denied plaintiff's request for review, tr. 5-7,  
17 making the ALJ's decision the Commissioner's final decision. 20  
18 C.F.R. §§ 404.981, 416.1481, 422.210. On July 27, 2007,  
19 plaintiff filed the complaint at bar. The relevant period under  
20 review begins March 10, 2004, plaintiff's alleged disability  
21 onset date, to March 21, 2007, the date of the ALJ's decision.

22 **STATEMENT OF THE FACTS**

23 Plaintiff was born in 1982. Tr. 63. He was 21 years old  
24 when he allegedly became disabled in March 2004, and 24 years old  
25 when the ALJ issued his March 2007 decision. Plaintiff graduated  
26 from high school and has worked as a telephone solicitor, fast-  
27 food worker, kitchen helper, gas-station attendant, industrial  
28 cleaner, and telephone sales representative. Tr. 280, 295. The

1 record indicates plaintiff worked part-time as a cashier for  
2 Burger King in 2006, and as a customer-service representative for  
3 Qwest in 2006 and 2007. Tr. 282-84.

4 Plaintiff was born with upper extremity deformities  
5 including no thumbs or forearms. The medical records state:  
6 "considerable gross abnormalities of the ulnar carpal joint and  
7 loss of several of the carpal bones. Scanning x-rays would  
8 suggest that there are only 4 carpal bones out of a standard  
9 eight." Tr. 170.

10 **STANDARD OF REVIEW**

11 This court must affirm the Secretary's decision if it is  
12 based on proper legal standards and the findings are supported by  
13 substantial evidence in the record. Hammock v. Bowen, 879 F.2d  
14 498, 501 (9th Cir. 1989). Substantial evidence is "more than a  
15 mere scintilla. It means such relevant evidence as a reasonable  
16 mind might accept as adequate to support a conclusion."  
17 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting  
18 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).  
19 The court must weigh "both the evidence that supports and  
20 detracts from the Secretary's conclusions." Martinez v. Heckler,  
21 807 F.2d 771, 772 (9th Cir. 1986).

22 The initial burden of proof rests upon the claimant to  
23 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486  
24 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate  
25 an "inability to engage in any substantial gainful activity by  
26 reason of any medically determinable physical or mental  
27 impairment which can be expected . . . to last for a continuous  
28 period of not less than 12 months. . . ." 42 U.S.C.

1       § 423(d)(1)(A).

2              The Secretary has established a five-step sequential  
3 process for determining whether a person is disabled. Bowen v.  
4 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,  
5 416.920. First the Secretary determines whether a claimant is  
6 engaged in "substantial gainful activity." If so, the claimant  
7 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.  
8 §§ 404.1520(b), 416.920(b).

9              In step two the Secretary determines whether the claimant  
10 has a "medically severe impairment or combination of  
11 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
12 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
13 disabled.

14              In step three the Secretary determines whether the  
15 impairment meets or equals "one of a number of listed impairments  
16 that the Secretary acknowledges are so severe as to preclude  
17 substantial gainful activity." Id.; see 20 C.F.R.  
18 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively  
19 presumed disabled; if not, the Secretary proceeds to step four.  
20 Yuckert, 482 U.S. at 141.

21              In step four the Secretary determines whether the claimant  
22 can still perform "past relevant work." 20 C.F.R.  
23 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not  
24 disabled. If she cannot perform past relevant work, the burden  
25 shifts to the Secretary. In step five, the Secretary must  
26 establish that the claimant can perform other work. Yuckert, 482  
27 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &  
28 (f). If the Secretary meets this burden and proves that the

1 claimant is able to perform other work which exists in the  
2 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,  
3 416.966.

4 **DISCUSSION**

5 **1. The ALJ's Findings**

6 Regarding Step One, the ALJ found that plaintiff may have  
7 engaged in substantial gainful activity in 2006 and 2007,  
8 nonetheless, the ALJ proceeded with the sequential evaluation.  
9 Tr. 16-17. Pursuant to Step Two, the ALJ found that plaintiff's  
10 back disorder and upper extremity congenital deformity were  
11 severe impairments. Tr. 17. Under Step Three, the ALJ found  
12 that plaintiff's impairments did not meet or equal the  
13 requirements of a listed impairment in 20 C.F.R. pt. 404, subpt.  
14 P, app.1. Tr. 17. Regarding plaintiff's residual functional  
15 capacity, the ALJ found that plaintiff could perform light work.  
16 Id.; 20 C.F.R. §§ 404.1567, 416.967. At Step Four, the ALJ found  
17 that plaintiff could not perform his past relevant work. Tr. 19.  
18 Finally, at Step Five, the ALJ found that plaintiff was not  
19 disabled because he could perform other work that exists in the  
20 national economy such as a storage-facility rental clerk, call-  
21 out operator, or surveillance-system monitor. Tr. 20. Plaintiff  
22 alleges error based on the ALJ's Step Five finding arguing he is  
23 unable to perform the identified occupations.

24 **2. Vocational Expert's Testimony**

25 Plaintiff argues that the ALJ relied on vocational expert  
26 ("VE") testimony premised on a hypothetical question that  
27 understated plaintiff's limitations. An ALJ must include all  
28 limitations supported by substantial evidence in a hypothetical

question to the vocational expert, but may exclude unsupported limitations and disregard vocational expert testimony premised on such limitations. Bayliss v. Barnhart, 427 F.3d 1211, 1217-18 (9<sup>th</sup> Cir. 2005). Here, the ALJ identified three jobs someone with plaintiff's residual functional capacity could perform: storage-facility rental clerk, call-out operator, and surveillance-system monitor. Tr. 296-97. The ALJ similarly found that plaintiff could perform these occupations. Tr. 20. Plaintiff argues that he is unable to perform these occupations due to his reaching, grasping, pinching and keyboarding limitations. The Commissioner concedes that the plaintiff could not perform the job of storage-facility rental clerk as it requires frequent handling. Plaintiff was limited by the ALJ to occasional handling. Tr. 17. Neither the vocational expert nor the ALJ explained this deviation. Tr. 17-18, 296-98. Therefore, remaining are two jobs identified by the vocational expert that plaintiff could perform: call-out operator and surveillance-system monitor.

Regarding the plaintiff's ability to reach, the ALJ did not find limits on this ability. Tr. 17. A surveillance-system monitor requires no reaching, and a call-out operator requires only occasional reaching. See DOT 379.367-010, DOT 237.367-014. The record indicates that plaintiff could reach occasionally. Moreover, his previous jobs required at least occasional reaching: fast-food worker (constant), DOT 311.472.010, telephone solicitor (occasional), DOT 299.357-014, kitchen helper (constant), DOT 318.687-010, gas station attendant (frequent), DOT 915.477-010, industrial cleaner (frequent), DOT 381.687-018, and telephone sales representative (occasional), DOT 253.257-010.

1 Finally, plaintiff's testimony, as well as his wife's testimony  
2 was consistent with plaintiff's ability to reach occasionally.  
3 Plaintiff testified he could not scrub his back, drive a stick  
4 shift, or reach top shelves, but that he could make change and  
5 sort papers without difficulty. Plaintiff is also able to  
6 prepare bottles for his two-year-old son. Tr. 289, 291.  
7 Plaintiff's wife testified that she reached high places for him,  
8 took out his contacts, and did his laundry, but that he regularly  
9 played video and board games. Tr. 293-94. I find that the ALJ  
10 relied on sufficient evidence in the record to find that  
11 plaintiff could reach occasionally and therefore perform the two  
12 jobs identified by the VE.

13 The plaintiff next asserts that the ALJ erred in assessing  
14 plaintiff's ability to grasp. The State agency reviewing  
15 physician limited plaintiff to occasional handling, including  
16 grasping. Tr. 166. The ALJ relied on the VE's testimony and  
17 opinion as well as the testimony in the record of both plaintiff  
18 and his wife regarding plaintiff's grasping and handling ability  
19 and limitations. The ALJ relied on substantial evidence in the  
20 record to limit plaintiff to occasional handling. Tr. 17. The  
21 VE testified that the call-out operator required only occasional  
22 handling, and the surveillance-system monitor requires no  
23 handling. Therefore, plaintiff's limitation to occasional  
24 grasping or handling did not preclude these jobs.

25 Finally, plaintiff argues the ALJ erred in assessing his  
26 ability to pinch and keyboard and that his deficit in those areas  
27 precluded his performance of the identified occupations. The  
28 State agency reviewing physician limited plaintiff to occasional

1 fingering (including keyboarding). Tr. 166. The ALJ also  
2 limited plaintiff to occasional fingering and keyboarding. Tr.  
3 17. A call-out operator requires occasional fingering, and a  
4 surveillance-system monitor requires no fingering.

5 The ALJ relied on evidence in the record supporting  
6 plaintiff's ability to "occasionally" finger such as his ability  
7 to type 25 words per minutes, ability to make change, prepare  
8 bottles for his son, and play video and board games. Tr. 285,  
9 289, 291, 293. Also, plaintiff's previous occupations required  
10 at least occasional fingering and often times more than  
11 occasional: fast-food worker (frequent), kitchen helper  
12 (occasional), gas station attendant (frequent), industrial  
13 cleaner (occasional), and telephone sales representative  
14 (occasional). There is no evidence or explanation in the record  
15 as to why plaintiff was no longer able to occasionally finger  
16 when he did so previously with his congenital impairments.  
17 Therefore, the ALJ relied on substantial evidence in the record  
18 to find that plaintiff had the ability to finger and/or keyboard  
19 occasionally, and thus, perform the occupations of call-out  
20 operator and surveillance-system monitor.

21 The ALJ properly relied on the VE's testimony to find that  
22 plaintiff could perform other work existing in significant  
23 numbers in the national economy.

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## CONCLUSION

The Commissioner's decision is based on substantial evidence, and is therefore, affirmed. This case is dismissed.

IT IS SO ORDERED.

Dated this 19 day of June 2008.

/s/ Ann Aiken

Ann Aiken

United States District Judge